

2005 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB78)

Received: **03/15/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Sheila Harsdorf (608) 266-7745**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - drugs**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Harsdorf@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**
cathlene.hanaman@legis.state.wi.us
christopher.sundberg@legis.state.wi.us
michael.dsida@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Methamphetamine

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 03/17/2005	wjackson 03/17/2005		_____			
/1	csundber 03/21/2005	wjackson 03/22/2005	jfrantze 03/18/2005	_____	lnorthro 03/18/2005	lnorthro 03/18/2005	
/2			rschluet	_____	sbasford	sbasford	

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			03/23/2005 _____		03/23/2005	03/23/2005	
/3	mdsida 03/29/2005	wjackson 03/29/2005	jfrantze 03/29/2005 _____		sbasford 03/30/2005	sbasford 03/30/2005	
/4	mdsida 03/30/2005	jdyer 03/30/2005	pgreensl 03/30/2005 _____		lnorthro 03/30/2005	lnorthro 03/30/2005	

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for Senate

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/3	mdsida 03/29/2005	wjackson 03/29/2005	jfrantze 03/29/2005	_____	sbasford 03/30/2005	sbasford 03/30/2005	

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3-22-05

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/?	mdsida	/pl wly 3/17	2/3/18	3/18			

FE Sent For:

<END>

Dsida, Michael

From: Schneider, Christian
Sent: Tuesday, March 15, 2005 1:34 PM
To: Dsida, Michael
Subject: Sub Amendment for SB78

Mike,

We would like a sub amendment for SB78, the meth bill, drafted. It should do the following:

1. Eliminate the Schedule V classification for pseudoephedrine and instead recreate all the Schedule V requirements for pseudoephedrine, just don't call it "Schedule V." Add in the requirement that photo ID be shown, that you must be 18 or older, and that the product can be distributed by a pharmacist's assistant or someone under the supervision of a pharmacist. There should be immunity for whoever distributes the product in the event someone shows a false ID. *not for reckless/ knowingly*
2. Specify that only law enforcement and the pharmacy examining board can have access to the log book. We may also need a requirement that the log book be structured such that each patient signs a separate page, to comply with patient confidentiality (HIPAA) requirements. From my discussions with pharmacists, it sounds like HIPAA is sporadically enforced - for Schedule V, patients often sign the same log book with the names of other drug purchasers on the list. We want to be sure to provide confidentiality.
3. Give a 90 day grace period for retailers and pharmacies to comply.
4. Provide immunity from prosecution for pharmacists who report their own infractions to law enforcement. For instance, if a pharmacist distributes too much pseudoephedrine to a customer in a 30 day period, the pharmacist may report themselves and escape penalty.

The bill will get a hearing on March 30th, and we would like to have a draft ASAP to review it before then.

Let me know if you have any questions.

Thanks,

Chris

Total by store

exception for
recklessness/
intentional

~~absolute~~

strict liability

Dsida, Michael

From: Schneider, Christian
Sent: Wednesday, March 16, 2005 5:05 PM
To: Dsida, Michael
Subject: RE: another exemption?

Yeah, if you can find language like that, I think that would be appropriate. I know Illinois mandates employee training for retailers that sell pseudoephedrine.

-----Original Message-----

From: Dsida, Michael
Sent: Wednesday, March 16, 2005 4:30 PM
To: Schneider, Christian
Subject: another exemption?

Under what circumstances should the pharmacy itself be subject to prosecution for the conduct of its employees? One option would be to hold the pharmacy liable only if it failed to train its employees adequately regarding the new law. (I think I saw something like that in Iowa, Missouri, or Oklahoma.)

Dsida, Michael

From: Schneider, Christian
Sent: Wednesday, March 16, 2005 12:27 PM
To: Dsida, Michael
Subject: RE: Other questions re meth sub

Yes and Yes.

-----Original Message-----

From: Dsida, Michael
Sent: Wednesday, March 16, 2005 12:14 PM
To: Schneider, Christian
Subject: Other questions re meth sub

1. Current s. 961.23 (2) is not very clear. In replicating the Schedule V restrictions for pseudophedrine, I have modified that language so that it reads: "It may be sold at retail only by a registered pharmacist and only in a retail establishment." Is that okay?
2. Under the bill, a person who intentionally bought an excessive amount of pseudophedrine is guilty of a Class I felony. Acquiring any amount of it by misrepresentation, fraud, etc. is a Class H felony. Do you want to retain that same penalty structure?

Dsida, Michael

From: Dsida, Michael
Sent: Thursday, March 17, 2005 12:01 PM
To: Schneider, Christian
Subject: Fake IDs when the attempt to purchase is unsuccessful

In keeping with your instructions, I am replicating for pseudoephedrine what is in current law for Schedule V controlled substances. But I wanted to alert you about one ambiguity in current law. The last sentence of s. 961.23 (4) says that the use of a fake ID alone can be sufficient to prove that the person obtained a controlled substance by fraud, etc. But it is not clear how that provision works if the pharmacist realizes that the person's ID is fake. Read literally, the last sentence could kick in even in those cases. Nevertheless, I suspect that courts would be reluctant to apply this provision if the attempt was unsuccessful. (I haven't looked at the legislative history of this provision.)

2005 SENATE BILL 78

February 24, 2005 – Introduced by Senators HARSDORF, BROWN, ROESSLER, JAUCH, DECKER, KAPANKE, ZIEN, LASSA, A. LASEE, OLSEN and STEPP, cosponsored by Representatives RHOADES, LAMB, PETTIS, MOULTON, GRONEMUS, KREIBICH, HUBLER, KRAWCZYK, HAHN, HINES, VAN ROY, TRAVIS, GUNDERSON, TOWNSEND, OTT, HUNDERTMARK, MUSSER, ALBERS and FREESE. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

Regen

1 AN ACT *to renumber* 961.437 (2) and 961.49; *to renumber and amend* 961.437
 2 (3), 961.437 (4), 961.437 (5) and 961.46; *to amend* 101.10 (title), 101.10 (3) (e),
 3 895.555 (title), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d.,
 4 939.62 (2m) (d), 948.015 (6), 961.23 (4), 961.23 (5), 961.41 (1r), 961.437 (title),
 5 961.49 (title) and 973.01 (2) (c) 2. a.; and *to create* 101.10 (3) (f), 111.335 (1) (cs)
 6 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag)
 7 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (14f), 961.22 (3) (b), 961.23
 8 (7), 961.437 (1) (title), 961.437 (2m), 961.437 (3m) (title), 961.46 (2), 961.49
 9 (2m), 973.017 (8) (a) 3. and 973.017 (8) (c) of the statutes; **relating to:**
 10 pseudoephedrine hydrochloride and other materials used to produce
 11 methamphetamine, the distribution of methamphetamine to minors, and
 12 providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes in the law relating to the controlled substance methamphetamine and materials used to make it.

*Substitute
Amendment*

EDIT BY
5 PM THURS
IF possible
Typing by 3/23

50047/1

This is a
prelim.
draft line
prelim.

SENATE BILL 78***Classification of pseudoephedrine hydrochloride as a controlled substance***

Under current law, each controlled substance is classified in one of five separate schedules. The classification is based on: 1) whether there is a currently accepted medical use for the drug; 2) the drug's potential for being abused; and 3) the nature of the psychological or physical dependence that of the drug use may produce. Schedule I controlled substances are those that have a high potential for abuse and no currently accepted medical use. Schedule V controlled substances are those that have an accepted medical use and that have a lower potential for abuse and produce less dependence when compared with other controlled substances. (Methamphetamine is included in Schedule II.)

In general, a Schedule I controlled substance may not be dispensed, even with a prescription. A Schedule II, III, or IV controlled substance may be dispensed with a prescription. A Schedule V controlled substance may be dispensed without a prescription, but only a registered pharmacist may sell it at retail and only then in certain specified amounts. In addition, the pharmacist must record the name and address of the purchaser of a Schedule V controlled substance and the quantity of the product sold. Penalties for crimes relating to Schedule I and II controlled substances are, in general, more severe than those relating to other controlled substances. Penalties for crimes relating to Schedule V controlled substances are generally the least severe. To illustrate, unlawful delivery of heroin (a Schedule I controlled substance) is a Class C, D, E, or F felony, depending on the amount of the drug involved, while unlawful delivery of any Schedule V controlled substance is a Class I felony, regardless of the amount involved.

This bill classifies pseudoephedrine hydrochloride as a Schedule V controlled substance. The bill also prohibits a person from purchasing more than nine grams of pseudoephedrine hydrochloride within a 30-day period and requires the purchaser to provide the pharmacist selling it with a photo ID. But the classification and the resulting restrictions on sale do not apply if: 1) the pseudoephedrine hydrochloride is in a product that contains therapeutically significant quantities of another active medicinal ingredient; 2) the pseudoephedrine hydrochloride is in a liquid or a soft gelatin capsule; or 3) the Controlled Substances Board has determined that the pseudoephedrine hydrochloride involved cannot be used readily in the manufacture of methamphetamine.

Possession of methamphetamine precursors

Current law generally prohibits possessing or disposing of waste resulting from the manufacture of methamphetamine. This prohibition does not apply to legitimate storage, treatment, or clean-up operations. A violation of this prohibition is a Class F felony. Second and subsequent offenses are Class H felonies.

Current law also prohibits possessing or attempting to possess methamphetamine itself. A violation of that prohibition is a Class I felony. In addition, current law prohibits manufacturing, distributing, and delivering methamphetamine and possessing methamphetamine with intent to manufacture, distribute, or deliver. A violation of one of these prohibitions is a Class C, D, E, or F felony, depending on the amount of the drug involved.

SENATE BILL 78

This bill prohibits possessing a variety of materials with intent to manufacture methamphetamine. A person who violates this prohibition is guilty of a Class H felony. (See the table near the end of this analysis for the penalties that apply to felonies created in this bill.) The materials that are covered by this prohibition are pseudoephedrine hydrochloride, ephedrine (a Schedule IV controlled substance), phenylpropanolamine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia, and liquid nitrogen. Possession of more than 24 grams of pseudoephedrine hydrochloride, ephedrine, or phenylpropanolamine can be used to prove the person's intent to manufacture methamphetamine.

In general, a person who is convicted of possessing the materials listed above with intent to manufacture methamphetamine is subject to the same disqualifications, disabilities, increased penalties, and other adverse or unfavorable treatments as a person who is convicted of possessing a controlled substance with intent to manufacture, distribute, or deliver ("possession with intent" crimes). For example, like possession with intent crimes, this new offense is classified as a "three-strikes" crime, which means that a person who is convicted of this crime and two other offenses that are covered by the relevant statute is sentenced, upon conviction for the last of those three offenses, to life imprisonment without the possibility of parole or extended supervision.

Agricultural chemicals used to make methamphetamine

Current law prohibits the theft of anhydrous ammonia or equipment used to apply it for an agricultural purpose or to store, hold, transport, or transfer it (anhydrous ammonia equipment). Current law also contains other prohibitions regarding storing, holding, transporting, and transferring anhydrous ammonia. A person who violates one of these prohibitions is guilty of a Class I felony (unless the violation occurs during agricultural activity or while the person is working on anhydrous ammonia equipment with its owner's consent, in which case the person is subject to a civil monetary penalty).

This bill prohibits a person from intentionally releasing another person's anhydrous ammonia without the other person's consent. A person who violates this prohibition is guilty of a Class I felony. The bill also makes the statute relating to theft of anhydrous ammonia or anhydrous ammonia equipment applicable to liquid nitrogen and specifies that attempted theft under that statute is subject to the same penalties as those that apply to the completed offense. (Most other attempts are punishable by half of the fine and half of the term of imprisonment that may be imposed for a completed offense.)

Distributing methamphetamine to minors

Under current law, if a person distributes or delivers a controlled substance to someone who is under the age of 18 and who is at least three years younger than he or she is, the applicable maximum term of imprisonment for the crime is increased by five years. Under this bill, if a person distributes or delivers methamphetamine to someone who is under the age of 18 and who is at least two years younger than he or she is, the person is guilty of a Class B felony.

SENATE BILL 78***Penalties***

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum term of confinement</i>	<i>Maximum sentence length</i>
Class B felony	N/A	40 years	60 years
Class H felony	\$10,000	3 years	6 years
Class I felony	\$10,000	1.5 years	3.5 years

Other information

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 101.10 (title) of the statutes is amended to read:

101.10 (title) Storage and handling of anhydrous ammonia; theft of liquid nitrogen, anhydrous ammonia, and anhydrous ammonia equipment.

SECTION 2. 101.10 (3) (e) of the statutes is amended to read:

101.10 (3) (e) Intentionally take, carry away, use, conceal, or retain possession of liquid nitrogen, anhydrous ammonia belonging to another, or anhydrous ammonia equipment belonging to another, without the other's consent and with intent to deprive the owner permanently of possession of the liquid nitrogen, anhydrous ammonia, or anhydrous ammonia equipment.

SECTION 3. 101.10 (3) (f) of the statutes is created to read:

101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia belonging to another into the atmosphere. This paragraph does not apply if the owner has authorized the actor to exercise control over the anhydrous ammonia or has consented to its release.

SENATE BILL 78

1 **SECTION 4.** 111.335 (1) (cs) 5. of the statutes is created to read:

2 111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.437 (2m) with
3 intent to manufacture methamphetamine under that subsection or under a federal
4 law or a law of another state that is substantially similar to s. 961.437 (2m)

5 **SECTION 5.** 125.12 (2) (ag) 5m. of the statutes is created to read:

6 125.12 (2) (ag) 5m. The person has been convicted of possessing any of the
7 materials listed in s. 961.437 (2m) with intent to manufacture methamphetamine
8 under that subsection or under a federal law or a law of another state that is
9 substantially similar to s. 961.437 (2m)

10 **SECTION 6.** 125.12 (2) (ag) 6m. of the statutes is created to read:

11 125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the
12 premises for which the license under this chapter is issued, to possess any of the
13 materials listed in s. 961.437 (2m) with the intent to manufacture
14 methamphetamine.

15 **SECTION 7.** 125.12 (4) (ag) 7m. of the statutes is created to read:

16 125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of
17 the materials listed in s. 961.437 (2m) with intent to manufacture
18 methamphetamine under that subsection or under a federal law or a law of another
19 state that is substantially similar to s. 961.437 (2m)

20 **SECTION 8.** 125.12 (4) (ag) 8m. of the statutes is created to read:

21 125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is
22 on the premises for which the license under this chapter is issued, to possess any of
23 the materials listed in s. 961.437 (2m) with the intent to manufacture
24 methamphetamine.

25 **SECTION 9.** 895.555 (title) of the statutes is amended to read:

SENATE BILL 78

SECTION 9

1 **895.555 (title) Liability exemption; anhydrous ammonia and liquid**
2 **nitrogen.**

3 **SECTION 10.** 895.555 (1) of the statutes is amended to read:

4 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person
5 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.
6 101.10 (1) (b), or who uses anhydrous ammonia or liquid nitrogen for any legal
7 purpose is immune from any civil liability for acts or omissions relating to the
8 anhydrous ammonia equipment or to anhydrous ammonia or liquid nitrogen that
9 cause damage or injury to an individual, if that damage or injury occurs during the
10 individual's violation of s. 101.10 (3) (c), (d), ~~or (e)~~, or (f).

11 **SECTION 11.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

12 938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under
13 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.437
14 (2m), the court shall order one of the following penalties: 65

15 **SECTION 12.** 939.32 (1) (g) of the statutes is created to read:

16 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is
17 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

18 **SECTION 13.** 939.62 (2m) (a) 2m. am. of the statutes is created to read:

19 939.62 (2m) (a) 2m. am. A crime under s. 961.437 (2m) 65

20 **SECTION 14.** 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

21 939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any
22 other state or, prior to April 28, 1994, under the law of this state that is comparable
23 to a crime specified in subd. 2m. a., am., b., or c.

24 **SECTION 15.** 939.62 (2m) (d) of the statutes is amended to read:

SENATE BILL 78

1 939.62 (2m) (d) If a prior conviction is being considered as being covered under
2 par. (a) 1m. b., or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or
3 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par.
4 (b) only if the court determines, beyond a reasonable doubt, that the violation
5 relating to that conviction would constitute a felony specified under par. (a) 1m. a.
6 or 2m. a., am., b., or c. if committed by an adult in this state.

7 SECTION 16. 948.015 (6) of the statutes is amended to read:

8 948.015 (6) ~~Sections 961.01 (6) and (9) and Section 961.49, relating to~~
9 ~~delivering and distributing offenses involving an intent to deliver or distribute~~
10 ~~controlled substances or controlled substance analogs to children at or near certain~~
11 ~~places.~~

12 SECTION 17. 961.01 (14f) of the statutes is created to read:

13 961.01 (14f) "Methamphetamine precursor" means ephedrine,
14 pseudoephedrine hydrochloride, phenylpropanolamine, or any of their salts,
15 isomers, and salts of isomers that are theoretically possible within the specific
16 chemical designation.

17 SECTION 18. 961.22 (3) (b) of the statutes is created to read:

18 961.22 (3) (b) Pseudoephedrine hydrochloride. This paragraph does not apply
19 under any of the following circumstances: *Subsection (1)*

20 ① The pseudoephedrine hydrochloride is in a product that contains
21 therapeutically significant quantities of another active medicinal ingredient.

22 ② The pseudoephedrine hydrochloride is in a liquid or a soft gelatin capsule.

23 ③ The controlled substances board has determined, by rule, that the
24 pseudoephedrine hydrochloride cannot be used readily in the manufacture of
25 methamphetamine.

pharmacy

SENATE BILL 78

SECTION 19

1 ~~SECTION 19. 961.23 (4) of the statutes is amended to read:~~

2 ~~961.23 (4) That any person purchasing such a substance at the time of~~
3 ~~purchase present to the seller that person's correct name and, address, and, if the~~
4 ~~person is purchasing a product to which s. 961.22 (3) (b) applies, an identification~~
5 ~~card containing the person's photograph. The seller shall record the name and~~
6 ~~address and the name and quantity of the product sold. The purchaser and the seller~~
7 ~~shall sign the record of this transaction. The giving of a false name or false address~~
8 ~~by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).~~


9 ~~SECTION 20. 961.23 (5) of the statutes is amended to read:~~

10 ~~961.23 (5) That no person may purchase more than 8 ounces of a product~~
11 ~~containing opium or more than 4 ounces of a product containing any other schedule~~
12 ~~V substance other than pseudoephedrine hydrochloride within a 48-hour period~~
13 ~~without the authorization of a physician, dentist, or veterinarian nor.~~

14 ~~(6) That no person other than a physician, dentist, veterinarian, or pharmacist~~
15 ~~may possess more than 8 ounces of a product containing opium or more than 4 ounces~~
16 ~~of a product containing any other schedule V substance be in the possession of any~~
17 ~~person other than a physician, dentist, veterinarian or pharmacist other than~~
18 ~~pseudoephedrine hydrochloride at any time without the authorization of a physician,~~
19 ~~dentist, or veterinarian.~~

20 ~~SECTION 21. 961.23 (7) of the statutes is created to read:~~

21 ~~961.23 (7) That no person other than a physician, dentist, veterinarian, or~~
22 ~~pharmacist may purchase more than 9 grams of a product to which s. 961.22 (3) (b)~~
23 ~~applies within a 30-day period without the authorization of a physician, dentist, or~~
24 ~~veterinarian.~~

25  SECTION 22. 961.41 (1r) of the statutes is amended to read:

SENATE BILL 78

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1 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
 2 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), and s. 961.437 (2m), an amount
 3 includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid
 4 diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
 5 methamphetamine precursors, methcathinone, or tetrahydrocannabinols or any
 6 controlled substance analog of any of these substances together with any compound,
 7 mixture, diluent, plant material or other substance mixed or combined with the
 8 controlled substance or, controlled substance analog, or methamphetamine
 9 precursor. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the
 10 amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t)
 11 and includes the weight of any marijuana.

12 ~~SECTION 23. 961.437 (title) of the statutes is amended to read:~~

13 ~~**961.437 (title) Possession and disposal of Materials used in and waste**~~
 14 ~~**produced from manufacture of methamphetamine.**~~

15 ~~SECTION 24. 961.437 (1) (title) of the statutes is created to read:~~

16 ~~961.437 (1) (title) DEFINITIONS.~~

17 ~~SECTION 25. 961.437 (2) of the statutes is renumbered 961.437 (3m) (a).~~

18 ~~SECTION 26. 961.437 (2m) of the statutes is created to read:~~

19 ~~961.437 (2m) MATERIALS USED IN MANUFACTURE OF METHAMPHETAMINE.~~ Except
 20 as authorized by this chapter, any person who possesses a methamphetamine
 21 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous
 22 ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture
 23 methamphetamine is guilty of a Class H felony. Possession of more than 24 grams
 24 of methamphetamine precursors shall be prima facie evidence of intent to
 25 manufacture methamphetamine.

Move To

INS 11/15B

65

INS
9/11

SENATE BILL 78

SECTION 27

1 **SECTION 27.** 961.437 (3) of the statutes is renumbered 961.437 (3m) (b), and
2 961.437 (3m) (b) (intro.) and 2., as renumbered, are amended to read:

3 961.437 (3m) (b) (intro.) ~~Subsection (2) Paragraph (a)~~ does not apply to a person
4 who possesses or disposes of methamphetamine manufacturing waste under all of
5 the following circumstances:

6 2. The methamphetamine manufacturing waste had previously been possessed
7 or disposed of by another person in violation of sub. (2) par. (a).

8 **SECTION 28.** 961.437 (3m) (title) of the statutes is created to read:

9 961.437 (3m) (title) WASTE FROM MANUFACTURE OF METHAMPHETAMINE.

10 **SECTION 29.** 961.437 (4) of the statutes is renumbered 961.437 (3m) (c), and
11 961.437 (3m) (c) (intro.), as renumbered, is amended to read:

12 961.437 (3m) (c) (intro.) A person who violates sub. (2) par. (a) is subject to the
13 following penalties:

14 **SECTION 30.** 961.437 (5) of the statutes is renumbered 961.437 (3m) (d) and
15 amended to read:

16 961.437 (3m) (d) Each day of a continuing violation of sub. (2) par. (a) 1. or (b)
17 ~~2. constitutes a separate offense.~~

18 **SECTION 31.** 961.46 of the statutes is renumbered 961.46 (1) and amended to
19 read:

20 961.46 (1) If Except as provided in sub. (2), if a person violates s. 961.41 (1) by
21 distributing or delivering a controlled substance or a controlled substance analog to
22 a person 17 years of age or under who is at least 3 years his or her junior, the
23 applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the
24 offense may be increased by not more than 5 years.

25 **SECTION 32.** 961.46 (2) of the statutes is created to read:

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1 961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)
2 by distributing or delivering methamphetamine or a controlled substance analog of
3 methamphetamine to a person 17 years of age or under who is at least 2 years his
4 or her junior, the person is guilty of a Class B felony.

5 **SECTION 33.** 961.49 (title) of the statutes is amended to read:

6 **961.49** (title) ~~Distribution of or possession with~~ Offenses involving
7 intent to deliver or distribute a controlled substance on or near certain
8 places.

9 **SECTION 34.** 961.49 of the statutes is renumbered 961.49 (1m).

10 **SECTION 35.** 961.49 (2m) of the statutes is created to read:

11 961.49 (2m) If any person violates s. 961.437 (2m) with intent to deliver or
12 distribute methamphetamine or a controlled substance analog of methamphetamine
13 and the delivery, distribution, or possession takes place under any of the
14 circumstances listed under sub. (1m) (a), (b), (c), or (d), the maximum term of
15 imprisonment prescribed by law for that crime may be increased by 5 years.

16 **SECTION 36.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

17 973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46 (1), and 961.49.

18 **SECTION 37.** 973.017 (8) (a) 3. of the statutes is created to read:

19 973.017 (8) (a) 3. When making a sentencing decision concerning a person
20 convicted of violating s. 961.437 (2m), the court shall consider as an aggravating
21 factor the fact that the person intended to deliver or distribute methamphetamine
22 or a controlled substance analog of methamphetamine to a prisoner within the
23 precincts of any prison, jail, or house of correction.

24 **SECTION 38.** 973.017 (8) (c) of the statutes is created to read:

INS
11/15 A
then
INS 11/15 B
(from p. 9)

SENATE BILL 78**SECTION 38**

1 973.017 (8) (c) When making a sentencing decision concerning a person
2 convicted of violating s. 961.437 (2m), the court shall consider as an aggravating
3 factor the fact that the person intended to deliver or distribute methamphetamine
4 or a controlled substance analog of methamphetamine and that the person
5 knowingly used a public transit vehicle during the violation.

6

(END)

INS 12/5



2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0047/P1ins
MGD:.....

INSERT 7/16

SECTION ~~961.01~~ 961.01 (20d) of the statutes is created to read:

961.01 (20d) "Pseudoephedrine hydrochloride" does not include a product containing the chemical pseudoephedrine hydrochloride if any of the following applies:

(a) The product contains therapeutically significant quantities of another active medicinal ingredient.

(b) The product is a liquid or a soft gelatin capsule.

(c) The controlled substances board has determined, by rule, that the product cannot be readily used in the manufacture of methamphetamine.

INSERT 9/11

SECTION ~~961.437~~ 961.437 of the statutes is renumbered 961.67. ✓

INSERT 11/15A

SECTION ~~961.61~~ 961.61 of the statutes is renumbered 961.003. ✓

SECTION ~~961.62~~ 961.62 of the statutes is renumbered 961.005. ✓

SECTION ~~961.63~~ 961.63 of the statutes is created to read:

961.63 Delivery of pseudoephedrine hydrochloride. (1) ^ΔDEFINITIONS. In this section:

(a) "Pharmacy assistant" means a person working under the supervision of a pharmacist.

(b) "Seller" means a person who sells pseudoephedrine hydrochloride.

(2) ^ΔRESTRICTIONS ON DELIVERY. The delivery of pseudoephedrine hydrochloride is subject to the following conditions:

(a) It may be delivered and sold only in good faith as a medicine and not for the purpose of evading this section.

1 (b) It may be sold at retail only by a registered pharmacist or a pharmacy
2 assistant and only in a retail establishment.

3 (c) When sold in a retail establishment, its container shall bear the name and
4 address of the establishment.

5 (d) Any person purchasing it at retail shall present to the seller, at the time of
6 the purchase, the person's correct name and address and an identification card
7 containing the person's photograph and date of birth. The seller shall record the
8 person's name and address and the name and quantity of the product sold. The
9 purchaser and the seller shall sign the record of this transaction. The giving of a false
10 name or false address by the purchaser or the use of an identification card containing
11 false information by the purchaser shall be prima facie evidence of a violation of sub.

12 (3) (b).[↓]

13 (e) No person may sell it to a person under 18 years of age, and no person under
14 18 years of age may purchase it.

15 (f) No person other than a physician, dentist, veterinarian, or pharmacist may
16 purchase more than 9 grams of it within a 30-day period without the authorization
17 of a physician, dentist, or veterinarian.[↓]

18 (g) No person may sell more than 9 grams of it within a 30-day period to any
19 other person, other than to a physician, dentist, veterinarian, or pharmacist, unless
20 the other person has been authorized to purchase more than that amount by a
21 physician, dentist, or veterinarian.[↓]

22 (3) [↓]_Δ OFFENSES AND PENALTIES. (a) Any person who violates sub. (2) is guilty of a
23 Class I felony.

1 (b) Any person who acquires or obtains possession of pseudoephedrine
2 hydrochloride by misrepresentation, fraud, forgery, deception, or subterfuge is guilty
3 of a Class H felony.

4 (4) DEFENSES (a) A seller who proves all of the following by a preponderance of
5 the evidence has a defense to prosecution under sub. (3) (a):

- 6 1. The seller did not knowingly or recklessly violate sub. (2).
7 2. The seller reported his or her own violation to a law enforcement officer in
8 the county or municipality in which the violation occurred within 30 days after the
9 violation.

10 (b) A seller who proves all of the following by a preponderance of the evidence
11 has a defense to prosecution under sub. (3) (a):

- 12 1. The seller did not knowingly or recklessly violate sub. (2).
13 2. The acts or omissions constituting the violation of sub. (2) were the acts or
14 omissions of one or more of the seller's employees.
15 3. The seller provided training to each of those employees regarding the
16 restrictions imposed under sub. (2) on the delivery of pseudoephedrine
17 hydrochloride.

18 (c) A seller who proves all of the following by a preponderance of the evidence
19 has a defense to prosecution under sub. (3) (a) for a violation of sub. (2) (e):

- 20 1. The purchaser presented an identification card that indicated that he or she
21 was 18 years of age or older.
22 2. The appearance of the purchaser was such that an ordinary and prudent
23 person would believe that the purchaser was 18 years of age or older.

1 3. The sale was made in good faith, in reasonable reliance on the identification
2 card and appearance of the purchaser, and in the belief that the purchaser was 18
3 years of age or older.

4 (d) A seller who proves all of the following by a preponderance of the evidence
5 has a defense to prosecution under sub. (3) (a) for a violation of sub. (2) (g):

6 1. The purchaser presented an identification card that contained a name or
7 address other than the person's own.

8 2. The appearance of the purchaser was such that an ordinary and prudent
9 person would believe that the purchaser was the person depicted in the photograph
10 contained in that identification card.

11 3. The sale was made in good faith, in reasonable reliance on the identification
12 card and appearance of the purchaser, and in the belief that the name and address
13 of the purchaser were as listed on the identification card.

14 (5) A person who sells pseudoephedrine hydrochloride at retail shall maintain
15 the confidentiality of information recorded under sub. (2) (d). Only a pharmacist,
16 pharmacist assistant, a law enforcement officer, or the pharmacy examining board
17 may have access to information recorded under sub. (2) (d).

18 **INSERT 12/5**

19 **SECTION 12. Effective dates.** This act takes effect on the day after publication,
20 except as follows:

21 (1) The treatment of section 961.63 of the statutes takes effect on the first day
22 of the ^{3rd} month beginning after publication.

3/14 Christian @ Harsdorf

8047/1: PEB shall by rule
determine the form of the
log book.

Do as 1/2



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0047/18

MGD:wlj:jf

1/2 RANK

Due: Wed 3/23/05 9:00 AM? ↓ CTS

SENATE SUBSTITUTE AMENDMENT,
TO 2005 SENATE BILL 78

Regen

1 AN ACT *to renumber* 961.437, 961.49, 961.61 and 961.62; *to renumber and*
2 *amend* 961.46; *to amend* 101.10 (title), 101.10 (3) (e), 895.555 (title), 895.555
3 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d., 939.62 (2m) (d), 961.41 (1r),
4 961.49 (title) and 973.01 (2) (c) 2. a.; and *to create* 101.10 (3) (f), 111.335 (1) (cs)
5 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 125.12 (4) (ag)
6 8m., 939.32 (1) (g), 939.62 (2m) (a) 2m. am., 961.01 (14f), 961.01 (20d), 961.46
7 (2), 961.49 (2m), 961.63, 961.65, 973.017 (8) (a) 3. and 973.017 (8) (c) of the
8 statutes; **relating to:** pseudoephedrine hydrochloride and other materials
9 used to produce methamphetamine, the distribution of methamphetamine to
10 *granting rule-making authority* minors, and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

11 SECTION 1. 101.10 (title) of the statutes is amended to read:

1 **101.10 (title) Storage and handling of anhydrous ammonia; theft of**
2 **liquid nitrogen, anhydrous ammonia, and anhydrous ammonia equipment.**

3 **SECTION 2.** 101.10 (3) (e) of the statutes is amended to read:

4 101.10 (3) (e) Intentionally take, carry away, use, conceal, or retain possession
5 of liquid nitrogen, anhydrous ammonia belonging to another, or anhydrous ammonia
6 equipment belonging to another, without the other's consent and with intent to
7 deprive the owner permanently of possession of the liquid nitrogen, anhydrous
8 ammonia, or anhydrous ammonia equipment.

9 **SECTION 3.** 101.10 (3) (f) of the statutes is created to read:

10 101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia
11 belonging to another into the atmosphere. This paragraph does not apply if the
12 owner has authorized the actor to exercise control over the anhydrous ammonia or
13 has consented to its release.

14 **SECTION 4.** 111.335 (1) (cs) 5. of the statutes is created to read:

15 111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.65 with intent
16 to manufacture methamphetamine under that subsection or under a federal law or
17 a law of another state that is substantially similar to s. 961.65.

18 **SECTION 5.** 125.12 (2) (ag) 5m. of the statutes is created to read:

19 125.12 (2) (ag) 5m. The person has been convicted of possessing any of the
20 materials listed in s. 961.65 with intent to manufacture methamphetamine under
21 that subsection or under a federal law or a law of another state that is substantially
22 similar to s. 961.65.

23 **SECTION 6.** 125.12 (2) (ag) 6m. of the statutes is created to read:

1 125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the
2 premises for which the license under this chapter is issued, to possess any of the
3 materials listed in s. 961.65 with the intent to manufacture methamphetamine.

4 **SECTION 7.** 125.12 (4) (ag) 7m. of the statutes is created to read:

5 125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of
6 the materials listed in s. 961.65 with intent to manufacture methamphetamine
7 under that subsection or under a federal law or a law of another state that is
8 substantially similar to s. 961.65.

9 **SECTION 8.** 125.12 (4) (ag) 8m. of the statutes is created to read:

10 125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is
11 on the premises for which the license under this chapter is issued, to possess any of
12 the materials listed in s. 961.65 with the intent to manufacture methamphetamine.

13 **SECTION 9.** 895.555 (title) of the statutes is amended to read:

14 **895.555 (title) Liability exemption; anhydrous ammonia and liquid**
15 **nitrogen.**

16 **SECTION 10.** 895.555 (1) of the statutes is amended to read:

17 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person
18 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.
19 101.10 (1) (b), or who uses anhydrous ammonia or liquid nitrogen for any legal
20 purpose is immune from any civil liability for acts or omissions relating to the
21 anhydrous ammonia equipment or to anhydrous ammonia or liquid nitrogen that
22 cause damage or injury to an individual, if that damage or injury occurs during the
23 individual's violation of s. 101.10 (3) (c), (d), ~~or (e)~~, or (f).

24 **SECTION 11.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

1 938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under
2 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.65,
3 the court shall order one of the following penalties:

4 **SECTION 12.** 939.32 (1) (g) of the statutes is created to read:

5 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is
6 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

7 **SECTION 13.** 939.62 (2m) (a) 2m. am. of the statutes is created to read:

8 939.62 (2m) (a) 2m. am. A crime under s. 961.65.

9 **SECTION 14.** 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

10 939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any
11 other state or, prior to April 28, 1994, under the law of this state that is comparable
12 to a crime specified in subd. 2m. a., am., b., or c.

13 **SECTION 15.** 939.62 (2m) (d) of the statutes is amended to read:

14 939.62 (2m) (d) If a prior conviction is being considered as being covered under
15 par. (a) 1m. b., or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or
16 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par.
17 (b) only if the court determines, beyond a reasonable doubt, that the violation
18 relating to that conviction would constitute a felony specified under par. (a) 1m. a.
19 or 2m. a., am., b., or c. if committed by an adult in this state.

20 **SECTION 16.** 961.01 (14f) of the statutes is created to read:

21 961.01 (14f) “Methamphetamine precursor” means ephedrine,
22 pseudoephedrine hydrochloride, phenylpropanolamine, or any of their salts,
23 isomers, and salts of isomers that are theoretically possible within the specific
24 chemical designation.

25 **SECTION 17.** 961.01 (20d) of the statutes is created to read:

1 961.01 (20d) “Pseudoephedrine hydrochloride” does not include a product
2 containing the chemical pseudoephedrine hydrochloride if any of the following
3 applies:

4 (a) The product contains therapeutically significant quantities of another
5 active medicinal ingredient.

6 (b) The product is a liquid or a soft gelatin capsule.

7 (c) The controlled substances board has determined, by rule, that the product
8 cannot be readily used in the manufacture of methamphetamine.

9 **SECTION 18.** 961.41 (1r) of the statutes is amended to read:

10 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under
11 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), and s. 961.65, an amount includes
12 the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid
13 diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,
14 methamphetamine precursors, methcathinone, or tetrahydrocannabinols or any
15 controlled substance analog of any of these substances together with any compound,
16 mixture, diluent, plant material or other substance mixed or combined with the
17 controlled substance ~~or~~, controlled substance analog, or methamphetamine
18 precursors. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the
19 amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t)
20 and includes the weight of any marijuana.

21 **SECTION 19.** 961.437 of the statutes is renumbered 961.67.

22 **SECTION 20.** 961.46 of the statutes is renumbered 961.46 (1) and amended to
23 read:

24 961.46 (1) If Except as provided in sub. (2), if a person violates s. 961.41 (1) by
25 distributing or delivering a controlled substance or a controlled substance analog to

1 a person 17 years of age or under who is at least 3 years his or her junior, the
2 applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the
3 offense may be increased by not more than 5 years.

4 **SECTION 21.** 961.46 (2) of the statutes is created to read:

5 961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)
6 by distributing or delivering methamphetamine or a controlled substance analog of
7 methamphetamine to a person 17 years of age or under who is at least 2 years his
8 or her junior, the person is guilty of a Class B felony.

9 **SECTION 22.** 961.49 (title) of the statutes is amended to read:

10 **961.49 (title) ~~Distribution of or possession with~~ Offenses involving**
11 **intent to deliver or distribute a controlled substance on or near certain**
12 **places.**

13 **SECTION 23.** 961.49 of the statutes is renumbered 961.49 (1m).

14 **SECTION 24.** 961.49 (2m) of the statutes is created to read:

15 961.49 (2m) If any person violates s. 961.65 with intent to deliver or distribute
16 methamphetamine or a controlled substance analog of methamphetamine and the
17 delivery, distribution, or possession takes place under any of the circumstances listed
18 under sub. (1m) (a), (b), (c), or (d), the maximum term of imprisonment for that crime
19 may be increased by 5 years.

20 **SECTION 25.** 961.61 of the statutes is renumbered 961.003.

21 **SECTION 26.** 961.62 of the statutes is renumbered 961.005.

22 **SECTION 27.** 961.63 of the statutes is created to read:

23 **961.63 Delivery of pseudoephedrine hydrochloride. (1) DEFINITIONS.** In
24 this section:

1 (a) "Pharmacy assistant" means a person working under the supervision of a
2 pharmacist.

3 (b) "Seller" means a person who sells pseudoephedrine hydrochloride.

4 (2) RESTRICTIONS ON DELIVERY. The delivery of pseudoephedrine hydrochloride
5 is subject to the following conditions:

6 (a) It may be delivered and sold only in good faith as a medicine and not for the
7 purpose of evading this section.

8 (b) It may be sold at retail only by a registered pharmacist or a pharmacy
9 assistant and only in a retail establishment.

10 (c) When sold in a retail establishment, its container shall bear the name and
11 address of the establishment.

12 (d) Any person purchasing it at retail shall present to the seller, at the time of
13 the purchase, the person's correct name and address and an identification card
14 containing the person's photograph and date of birth. The seller shall record the
15 person's name and address and the name and quantity of the product sold. The
16 purchaser and the seller shall sign the record of this transaction. The giving of a false
17 name or false address by the purchaser or the use of an identification card containing
18 false information by the purchaser shall be prima facie evidence of a violation of sub.

19 (3) (b).

20 (e) No person may sell it to a person under 18 years of age, and no person under
21 18 years of age may purchase it.

22 (f) No person other than a physician, dentist, veterinarian, or pharmacist may
23 purchase more than 9 grams of it within a 30-day period without the authorization
24 of a physician, dentist, or veterinarian.

1 (g) No person may sell more than 9 grams of it within a 30-day period to any
2 other person, other than to a physician, dentist, veterinarian, or pharmacist, unless
3 the other person has been authorized to purchase more than that amount by a
4 physician, dentist, or veterinarian.

5 (3) OFFENSES AND PENALTIES. (a) Any person who violates sub. (2) is guilty of
6 a Class I felony.

7 (b) Any person who acquires or obtains possession of pseudoephedrine
8 hydrochloride by misrepresentation, fraud, forgery, deception, or subterfuge is guilty
9 of a Class H felony.

10 (4) DEFENSES. (a) A seller who proves all of the following by a preponderance
11 of the evidence has a defense to prosecution under sub. (3) (a):

12 1. The seller did not knowingly or recklessly violate sub. (2).

13 2. The seller reported his or her own violation to a law enforcement officer in
14 the county or municipality in which the violation occurred within 30 days after the
15 violation.

16 (b) A seller who proves all of the following by a preponderance of the evidence
17 has a defense to prosecution under sub. (3) (a):

18 1. The seller did not knowingly or recklessly violate sub. (2).

19 2. The acts or omissions constituting the violation of sub. (2) were the acts or
20 omissions of one or more of the seller's employees.

21 3. The seller provided training to each of those employees regarding the
22 restrictions imposed under sub. (2) on the delivery of pseudoephedrine
23 hydrochloride.

24 (c) A seller who proves all of the following by a preponderance of the evidence
25 has a defense to prosecution under sub. (3) (a) for a violation of sub. (2) (e):

1 1. The purchaser presented an identification card that indicated that he or she
2 was 18 years of age or older.

3 2. The appearance of the purchaser was such that an ordinary and prudent
4 person would believe that the purchaser was 18 years of age or older.

5 3. The sale was made in good faith, in reasonable reliance on the identification
6 card and appearance of the purchaser, and in the belief that the purchaser was 18
7 years of age or older.

8 (d) A seller who proves all of the following by a preponderance of the evidence
9 has a defense to prosecution under sub. (3) (a) for a violation of sub. (2) (g):

10 1. The purchaser presented an identification card that contained a name or
11 address other than the person's own.

12 2. The appearance of the purchaser was such that an ordinary and prudent
13 person would believe that the purchaser was the person depicted in the photograph
14 contained in that identification card.

15 3. The sale was made in good faith, in reasonable reliance on the identification
16 card and appearance of the purchaser, and in the belief that the name and address
17 of the purchaser were as listed on the identification card.

18 (5) ~~A person who sells pseudoephedrine hydrochloride at retail shall maintain~~
19 ~~the confidentiality of information recorded under sub. (2) (d).~~ Only a pharmacist,
20 pharmacist assistant, law enforcement officer, or the pharmacy examining board
21 may have access to information recorded under sub. (2) (d).

22 **SECTION 28.** 961.65 of the statutes is created to read:

23 **961.65 Possessing materials for manufacturing methamphetamine.**

24 Except as authorized by this chapter, any person who possesses a methamphetamine
25 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous

INS
9-18

1 ammonia, pressurized ammonia, or liquid nitrogen with intent to manufacture
2 methamphetamine is guilty of a Class H felony. Possession of more than 24 grams
3 of methamphetamine precursors shall be prima facie evidence of intent to
4 manufacture methamphetamine.

5 **SECTION 29.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

6 973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46 (1), and 961.49.

7 **SECTION 30.** 973.017 (8) (a) 3. of the statutes is created to read:

8 973.017 (8) (a) 3. When making a sentencing decision concerning a person
9 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
10 fact that the person intended to deliver or distribute methamphetamine or a
11 controlled substance analog of methamphetamine to a prisoner within the precincts
12 of any prison, jail, or house of correction.

13 **SECTION 31.** 973.017 (8) (c) of the statutes is created to read:

14 973.017 (8) (c) When making a sentencing decision concerning a person
15 convicted of violating s. 961.65, the court shall consider as an aggravating factor the
16 fact that the person intended to deliver or distribute methamphetamine or a
17 controlled substance analog of methamphetamine and that the person knowingly
18 used a public transit vehicle during the violation.

19 **SECTION 32. Effective dates.** This act takes effect on the day after publication,
20 except as follows:

21 (1) The treatment of section 961.63 of the statutes takes effect on the first day
22 of the 3rd month beginning after publication.

23 (END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0047/2ins
CTS:.....

1

Insert 9-18:

2

Woff

CS

RECORDKEEPING REQUIREMENTS. The pharmacy examining board shall

^

3

determine by rule the form of the record required under sub. (2) (d).[✓]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0047/2dn

CTS:.....

WLj

Senator Harsdorf:

This is a redraft of LRBs0047/1. In this version, the Pharmacy Examining Board must determine by rule the form of the record maintained by a person who sells pseudoephedrine hydrochloride. Please contact me if you have any questions.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0047/2dn
CTS:wlj:rs

March 22, 2005

Senator Harsdorf:

This is a redraft of LRBs0047/1. In this version, the Pharmacy Examining Board must determine by rule the form of the record maintained by a person who sells pseudoephedrine hydrochloride. Please contact me if you have any questions.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail: christopher.sundberg@legis.state.wi.us

Dsida, Michael

From: Schneider, Christian
Sent: Monday, March 28, 2005 11:47 AM
To: Dsida, Michael
Subject: Addition to meth bill re: electronic reporting

Mike,

There is a section of the Minnesota meth precursor bill that begins the process of setting up a statewide database for Schedule V purchases, so meth cooks can't move from pharmacy to pharmacy. Any way we can incorporate some language like this to our bill? Should we have the pharmacy examining board do such a report to the legislature?

Also, we are having a hearing on the bill on Wednesday. If we could have a copy of the revised sub (per my instructions this morning) by then, that would be ideal.

Thanks,

Chris

6.11 Sec. 6. [DEVELOPMENT OF COMPUTER SYSTEM; REPORT.] 6.12 The commissioner of public safety shall develop a plan for 6.13 the implementation by July 1, 2006, of a centralized computer or 6.14 electronic system to enable pharmacies to carry out their duties 6.15 under Minnesota Statutes, section 152.02, subdivision 6, 6.16 paragraph (e), clause (2), electronically or by the Internet. 6.17 By February 1, 2006, the commissioner shall report on the plan 6.18 to the legislature. The report must include a proposal to 6.19 enable pharmacies to switch from written logs to electronic logs 6.20 that are compatible with the proposed system, and suggested 6.21 statutory changes and a cost estimate to accomplish this.

Dsida, Michael

From: Schneider, Christian
Sent: Monday, March 28, 2005 2:00 PM
To: Dsida, Michael
Subject: RE: Changes to meth bill

Mike,

I called you back and left a message - I am at home right now, so you can call me at [REDACTED].

In response to your questions:

1. I would leave the limitation on possession as a prima facie. I assume that leaves a little more leeway for law enforcement, and we haven't heard any compelling reason from law enforcement to change it.
2. I believe Iowa solves this problem by limiting the purchaser to one package per transaction per 24 hour period (page 2, line 19 of their bill). Given that the use of liquid and gel caps to make meth is still not prevalent, I think this is a reasonable way to go.

-----Original Message-----

From: Dsida, Michael
Sent: Monday, March 28, 2005 1:42 PM
To: Schneider, Christian
Subject: RE: Changes to meth bill

1. In item 3, you refer to the limit on possession. I can change "24 grams" to "8 grams" at page 10, line 2. But that only makes a prima facie for a violation of that section. Do you also want a straight prohibition on the possession of more than 8 grams, as is the case for opium products under current s. 961.23 (5)? (The bill itself has no restriction on possession other than the prima facie language in s. 961.437 (2m).)
2. Does the 360 mg limitation apply to a single container? For example, what restrictions apply if I buy two containers of liquid or gelcaps, each of which contains 240 mg of pseudoephedrine?

-----Original Message-----

From: Schneider, Christian
Sent: Monday, March 28, 2005 8:42 AM
To: Dsida, Michael
Subject: Changes to meth bill

Mike,

As we learn more and more about the meth issue, and as other states take action, we realized we need to change the bill once again. This would be a /3, as Chris Sundberg made a change for us while you were gone.

Because of federal and other state regulations regarding schedule V substances, we need to scrap our initial plan to pull pseudoephedrine products out of schedule V. We want pseudoephedrine to be subject to federal and state regulations regarding delivery, warehousing, etc. Here are more of the details of what we need to do to change the bill:

1. Change the definition of "methamphetamine precursor" (Page 4, Line 21) to:

"Any material, compound, mixture, or preparation which contains any quantity of ephedrine or pseudoephedrine, or any of their salts, isomers, and salts of isomers."

Eliminate all references to "hydrochloride" - this is a specific type of pseudoephedrine, and we want to go with the broader definition.

2. Change the limit on sales and purchase to 6 grams every 30 days (from 9).
3. Change the limit on possession to 8 grams (from 24, as we have now).
4. Specify that a buyer would have to present a photo ID, that nobody under the age of 18 could purchase, and (for pharmacies only) specify that the product can be distributed by a pharmacy assistant (as written on page 7, line 8).
5. Eliminate exemptions (a) and (b) on Page 5, lines 4-6.
6. Notwithstanding point 5 above, we would like to allow retailers (in addition to pharmacies) to be able to sell liquid and gel cap pseudoephedrine products that have less than 360 mg of pseudoephedrine present. This is a compromise Iowa signed into law, and we think it makes sense, to allow rural consumers to still be able to get some relief. I will send you the Iowa act with the points relating to regulating retail sales - they would still be subject to a log book and photo ID requirement.
7. We would like to specify that the log book can be kept in electronic or written format, and that it would require the pharmacists' signature (as opposed to the "seller's" signature, which we have now). The log book should only be available to law enforcement and the pharmacist, and must be kept for a period of five years. The form of the log book should be determined by the pharmacy examining board by rule, in accordance with state and federal health and privacy laws.
8. The penalty for distribution to a minor should be changed from a Class B felony to a Class I felony. This was part of our DA's original recommendation, but Class B is way, way, too high.

All the immunity stuff for sellers stays.

Attached is the Iowa bill - the language on how they handle retailers begins on Page 2, Line 13 and ends on Page 3, line 18.

<http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&frame=1&GA=81&hbill=SF169>

Dsida, Michael

From: Schneider, Christian
Sent: Tuesday, March 29, 2005 1:11 PM
To: Dsida, Michael
Subject: RE: Record-keeping requirements

Yes, for both pharmacies and retailers.

From: Dsida, Michael
Sent: Tuesday, March 29, 2005 1:09 PM
To: Schneider, Christian
Subject: RE: Record-keeping requirements

same for gelcaps and liquids?

-----Original Message-----

From: Schneider, Christian

Sent: Monday, March 28, 2005 5:04 PM
To: Dsida, Michael
Subject: RE: Record-keeping requirements

Yes.

-----Original Message-----

From: Dsida, Michael
Sent: Monday, March 28, 2005 4:53 PM
To: Schneider, Christian
Subject: Record-keeping requirements

Should the penalty for selling pseudoephedrine without keeping proper records be the same as the penalty for selling more pseudoephedrine than permitted? (Unauthorized delivery of a Schedule V controlled substance is a Class I felony.)